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 VIOLET BLUE

UNITED STATES DISTRICT COURT FOR THE  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

VIOLET BLUE, an Individual,  
  
 Plaintiff and Counter-defendant,  
  
 v.

ADA MAE JOHNSON a/k/a ADA  
 WOFFINDEN, an individual d/b/a  
 VIOLET BLUE a/k/a VIOLET a/k/a  
 VIOLET LUST; et al.

Defendants and Counter-claimants.

Case No. C 07-5370 SI

**EX PARTE APPLICATION FOR AN  
 ORDER TO SHOW CAUSE RE:  
 DEFENDANT'S COMPLIANCE  
 WITH PRELIMINARY INJUNCTION  
 AND JUNE 24, 2008 ORDER**

The Honorable Susan Illston  
 Courtroom 10, 19th Floor  
 450 Golden Gate Avenue  
 San Francisco, CA 94102

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiff Violet Blue ("Blue") will and hereby does move the Court ex parte pursuant to Local Civil Rule 7-10 for an Order to Show Cause regarding Defendants compliance with paragraph 4 of the Preliminary Injunction Order issued on May 12, 2008 [see Exhibit A hereto (Docket No. 99) ("PI Order")] and this Court's Order of June 24, 2008 [see Exhibit B hereto (Docket No. 111) ("June 24 Order")]. This motion is based upon this ex parte notice, the Memorandum of Points and Authorities herein and the exhibits attached hereto, the pleadings and papers on file.

1 The undersigned counsel submits that a copy of this motion has been faxed and emailed  
 2 to Defendant's counsel, Robert Apgood, and the undersigned has attempted to reach Mr. Apgood  
 3 by phone to alert him to the substance of this ex parte application. The undersigned also has  
 4 informed Mr. Apgood that any response to this application should be emailed to the Court's  
 5 clerk, Ms. Sutton, in addition to being filed through the ECF system, and that such response  
 6 should be filed as soon as possible given the Court's unavailability after September 3, 2008.

### 8 MEMORANDUM OF POINTS AND AUTHORITIES

9 Paragraph 4 of the PI Order requires Defendant to serve the PI Order on "all individuals  
 10 and/or entities who distribute any films, videos, DVDs, images audio and/or audiovisual  
 11 materials that include [Defendant] appearing under the name "Violet Blue" and/or any name  
 12 confusingly similar to Plaintiff's trademark VIOLET BLUE (including 'Violetta Blue')." [See  
 13 Exh. A (PI Order) at 2:1-4.] At the June 20, 2008, Case Management Conference, based on  
 14 Plaintiff's concern that the PI Order had not properly been served, this Court ordered Defendant  
 15 to "file a list of the distributors that the preliminary injunction order was served on." [See Exh. B  
 16 (June 20 Order) at 1.] Defendant thereafter filed a document entitled "Notice of Third-Party  
 17 Notification." [See Exhibit C hereto (Docket No. 113 & 113-2).] This incomplete<sup>1</sup> "Notice",  
 18 however, is simply a print out of a list of names from Defendant's Yahoo! email address book.  
 19 Other than "names" -- and in some cases not even a real or complete "name" -- the "Notice" does  
 20 not provide further detail concerning the persons or entities served or when they were served, nor  
 21 does it include a declaration or certificate under oath of service of the PI Order.<sup>2</sup> Accordingly,

22  
 23 <sup>1</sup> Defendant's "Notice" also states that "[i]n addition to the individuals and entities listed in the  
 24 address book, a list of individuals contacted by telephone *is forthcoming* as an addendum to the  
 25 attached list." [See *id.* at 1:23-24 (emphasis added).] Plaintiff has received no such list and the  
 26 docket does not include such an addendum. Defendant's "Notice" also states that "[t]he  
 27 Defendant lacks the information necessary to contact Vivid, Wicket, VCA, Playboy TV and  
 28 HBO, but is pursuing that contact information." [Id. at 2:1-2.] Again, no further communication  
 has been received nor has Defendant amended her "Notice" to reflect having completed service  
 on these parties. Contact information for all of these entities is, of course, available via the  
 internet at the website of the entity itself, or through their respective secretary of state records.

<sup>2</sup> In responding to discovery (discussed in the next paragraph), Defendant appears to have  
 provided the email addresses of individuals in her Yahoo! address book, however the email list  
 provided in discovery is longer and different from the list provided to the court in the "Notice."  
 Plaintiff is thus without clarity of who was served, and the manner and timing of such alleged  
 service.

1 the "Notice" filed by Defendant does not provide sufficient evidence that the PI Order was  
2 actually served on the relevant third parties. *See* Fed. R. Civ. P. 5(b)(2); *id.* 5(d). Indeed, it  
3 appears that all that has happened since the Court issued its PI Order on May 12 is that  
4 Defendant herself may have sent an email to some third parties (but no copy of any email(s) has  
5 been provided to Plaintiff or this Court), and she may have telephoned some of these third to tell  
6 them about the injunction. These efforts do not amount to "service" under the Federal Rules.

7 Furthermore, Plaintiff has sought discovery regarding Defendant's compliance with  
8 paragraph 4 of the PI Order. Defendant's discovery responses were received by Plaintiff's  
9 counsel on July 10, 2008. [*See* Exhibit D hereto (Plaintiff's Second Set of Requests for  
10 Production to Defendant and [Defendant's] Responses Thereto) (partially redacted to conceal  
11 email and address information).] In these document request responses, Defendant describes her  
12 compliance with the Court's PI Order by purportedly emailing the PI Order from an email  
13 account that she has since deleted. [*See id.* at 7 ("The email account from which the notifications  
14 and copies of the injunction were sent ... was deleted upon completion of the mailings. See  
15 documents produced herewith showing recent notifications.".)] Her responses also indicate that  
16 Defendant has enlisted the assistance of a reporter for an adult industry publication and requested  
17 that the reporter publicize Defendant's new stage name and also the existence of the injunction.  
18 [*See id.* at 7:14 (referencing <http://www.avn.com/law/articles/30259.html>).] Setting aside the  
19 possible spoliation of evidence concerns regarding Defendant's deletion of the email account, it  
20 is clear that Defendant's conduct does not constitute "service" under Rule 5 of the Federal Rules  
21 of Civil Procedure. In short, it appears that neither Defendant nor her counsel have served the  
22 Order on third parties as required by the PI Order and Your Honor's June 24 Order.<sup>3</sup>

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27 <sup>3</sup> Importantly, no proof of service or certificate has been filed or offered by Defendant. Such  
28 proof or certificate would be under oath and subject to at least the protections against perjury and  
Rule 11 abuses. Plaintiff is mystified by Defendant's apparent disregard for basic procedural and  
substantive protections provided by the Courts and legal process generally.

1 For the foregoing reasons, Plaintiff hereby respectfully requests that the Court issue an  
2 Order to Show Cause regarding Defendants compliance with paragraph 4 of the PI Order and  
3 this Court's Order of June 24, 2008.

4 Dated: September 2, 2008

5 VOGELE & ASSOCIATES

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7 By: /S/  
8 Colette Vogele  
9 Attorneys for Plaintiff VIOLET BLUE  
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